THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 2716 (M/S) of 2001
(OLD NO. 15545/86)

1. State of U.P. through the Collector, Nainital.
2. The Sub-Divisional Officer. **.....Petitioner.**

Vs.

1. Hukum Chand S/o Muger Singh.
   Resident of Village Sonara Mazra Azadnagar
   Tehsil Kichha, District-Nainital.
2. Civil Judge, Nainital.
3. The Munsif, Rudrapur, Nainital. **.....Respondents.**

Sri R.C. Arya learned Standing counsel for the petitioner.
None appeared for the contesting respondents.

Date: - 13.09.2006

Hon'ble B.S. Verma, J.

Heard Sri R.C. Arya learned Standing counsel for the petitioner. None appears for the contesting respondents.

2. State of U.P. has filed the present writ petition before the Hon'ble Allahabad High Court which has been transferred to this Court, after creation of new State for quashing the judgment and order dated 30-04-1986 passed by the learned Civil Judge, Nainital in civil appeal No.78 of 1984 contained in Annexure No.4 to the writ petition.

3. Brief facts giving rise to the present writ petition are that the suit No.99 of 1983 for permanent injunction was filed against the petitioners by respondent No.1 which was decreed by the Munsif, Rudrapur vide order dated 6-9-1986. Aggrieved by the judgment and decree of the learned Munsif, the petitioners preferred a first appeal under Section 96 of C.P.C. which was also dismissed by the Additional Civil Judge, Nainital vide order dated 30-04-1986.

4. Aggrieved by the impugned order passed in First Appeal, the petitioners have filed this writ petition assailing the judgment and decree before this Court. The order passed under Section 96 of C.P.C. in first appeal is appealable by way of 2nd appeal under Section 100 of C.P.C. Therefore, the writ petition is not maintainable.

5. In view of alternative remedy available to the petitioners, which the petitioners do not avail, the writ petition is not maintainable and is dismissed as such.

(B.S. Verma, J.)

Dated: - 13.09.2006

M.K.